GERMAN-AMERICAN "MOST FAVORED NATION" RELATIONS.

I. EARLY GERMAN-AMERICAN TREATY RELATIONS.

GERMAN-AMERICAN legal relations first found expression in the commercial treaties of 1785, 1799, and 1828 between the United States and Prussia, and of 1827 between the United States and the Hanseatic republics of Hamburg, Lübeck, and Bremen. These treaties purport to establish "a firm, inviolable, and universal peace and sincere friendship" between the contracting parties and to guarantee "a reciprocal liberty of commerce and navigation," as well as the rights of the "most favored nation" in their commercial relations with one another. These rights of the most favored nation are defined in Arts. V and IX of the Prussian treaty of 1828. The former reads as follows:

> No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Prussia, and no higher or other duties shall be imposed on the importation into the kingdom of Prussia of any article the produce or manufacture of the United States, than are or shall be payable on the like article being the produce or manufacture of any other foreign country. Nor shall any prohibition be imposed on the importation or exportation of any article the produce or manufacture of the United States, or of Prussia, to or from the ports of the United States or to or from the ports of Prussia which shall not equally extend to all other nations (Art. V).

Art. IX states:

> If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, when it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

Similar treaties were negotiated between the United States and Hanover (1840 and 1846), Oldenburg (1847), and Mecklenburg-Schwerin (1847), so that at the time of the formation of the present German empire, most-favored-nation agreements existed between the United States on the one hand, the German states of Prussia, Oldenburg, and Mecklenburg-Schwerin (Hanover having been absorbed by Prussia in 1866), and the Hanseatic cities of Bremen, Hamburg, and Lübeck.

II. APPLICABILITY OF EARLY TREATIES TO THE EMPIRE.

With the inauguration of the new imperial government in 1871 the relation of these several treaties to the United States and to the empire naturally suggested itself. It appears, however, at first, when German-American commercial relations were of comparatively less importance, that the Prussian treaty of 1828 was tacitly regarded by both the American[1] and the German governments as applicable, not only to Prussia, but to the entire German empire, and a similar interpretation was applied to the Bancroft naturalization treaties of 1868 between the United States and the North German Confederation, Bavaria, Würtemberg, and Hesse.

As German-American relations became more important, and therefore more conflicting, this interpretation did not stand the test of practical politics.[2] The imperial government, finding the returning American citizen of Alsatian birth a disturbing factor in Alsace-Lorraine, denied in 1880 the applicability of the Bancroft treaties to the "Reichsland," although Mr. White, at that time the American minister at Berlin, showed very clearly that Germany had tacitly recognized this interpretation for nearly ten years.[3] On the other hand, the German government has, in late years, shown more and more a tendency to emphasize the applicability of the Prussian treaty of 1828 to the empire, while the American government has, at the same time, been equally emphatic in denying this claim and in asserting that the treaty regulates only the commercial relations between the United States and Prussia, although this interpretation does not apparently affect more advantageously the economic interests of the former.[4]

III. GERMAN AND AMERICAN MOST-FAVORED-NATION CONCEPT.

Another point in the discussion which needs elucidation is the difference of views held by the two governments as to the content of the most-favored-nation right. From the first it has been the uniform

[1] Consult United States Minister Kasson's discussion with Bismarck (*F. O. No. 11*, October 28, 1884), referred to by Secretary of State von Marschall in his speech in the Reichstag on May 8, 1897.

[2] Secretary Gresham stated in 1894 (*Foreign Relations*, p. 237) that "the stipulations of these two articles (V and IX) placed the commercial intercourse of the United States and Prussia, *not the entire German empire*, on the most-favored-nation basis." Similar views are expressed by Secretary Olney (*Miscellaneous Document, Senate, 52*) and by Secretary Sherman on January 31, 1898.

[3] *Foreign Relations* 1880–81, p. 441.

[4] FISK, *Handelsbeziehungen zwischen Deutschland und Amerika*, p. 238.

principle of the United States that "a covenant to give privilege granted to the most favored nation only refers to gratuitous privileges and does not cover privileges granted on the condition of a reciproca advantage."[1] In other words there is no opposition between a reci procity arrangement with one country and a most-favored-nation agree ment with another. In fact, this principle is not only expressly recognized in Art IX of the Prussian treaty, but has also been incor porated in other German treaties,[2] although her recognition of the principle has not been so consistently uniform as that of the United States. The imperial government distinguishes between an unrestricted (Art. V of treaty of 1828) and a restricted (Art. IX) most-favored-nation agreement in her commercial relations with other countries.[3] The point is very clearly stated by the German writer Calwer in the following words:

> Our relations with France are based upon an *unrestricted* most-favored-nation agreement. According to the Frankfort treaty (1871) we must grant to France *gratuitously* every tariff concession made to England, Belgium, Holland, Switzerland, Austria, and Russia. In connection with this legal relation with France Art. IX of the Prussian-American treaty loses its entire meaning. There follows indirectly from this affirmation of the principle of reciprocity (*i. e.*, Art. IX) the legal claim of the United States to unrestricted most-favored-nation rights. Since all advantages accrue to France without reciprocal compensations, such compensations can no longer be demanded of the United States.

In other words, Germany has placed herself in the position of being morally obliged to grant to the United States *unrestricted* most-favored-nation privileges, while she can only claim *restricted* privileges in return. Nor could the United States grant other than these restricted rights without departing from her uniform policy and disturbing her most-favored-nation relations with other powers. If we bear in mind these distinctions, it will aid us in understanding the legal relations existent between the German and American governments.

IV. AMERICAN-HAWAIIAN RECIPROCITY TREATY, 1875–78.

The question came up for discussion in connection with the reciprocity treaty of 1875 between the United States and Hawaii. Germany showed a tendency to claim from Hawaii privileges similar to those granted to the United States. Mr. Carter, the Hawaiian com-

[1] WHARTON, *International Law Digest*, Vol. II, § 205.

[2] HOLTZENDORF, *Handbuch des Völkerrecht*, Vol. III, § 205.

[3] CALWER, *Die Meistbegünstigung der Vereinigten Staaten*, p. 17.

missioner to Europe, reported to his government from Berlin, under date of June 25, 1878, that his negotiations with that government were retarded by its reluctance to make a commercial treaty without providing for the fullest equality in respect to import duties. He adds:

> They, however, finally acknowledged that the peculiar circumstances of our position justified them in so doing, and an article was framed by which it was agreed that the special advantages granted to the government of the United States, in consideration of equivalent advantages, should not, in any case, be invoked in favor of Germany.[1]

V. GERMAN DIFFERENTIAL RAILROAD RATES, 1884.

There is another phase of German policy which has an important bearing on the question at issue, and that is the application of differential rates on German state railroads. Correspondence on this point passed in 1884 between Mr. Kasson, the American minister at Berlin, and Bismarck, the imperial chancellor. The cause was an agitation at that time in favor of enacting preferential petroleum rates favoring the Russian product at the expense of American oil. Mr. Kasson claimed that such a proposal, if adopted, would violate the German-American most-favored-nation agreement.[2] The main points of Bismarck's reply were (1) that the treaty of 1828 was concluded before railroads existed; (2) that the discriminations of duties referred to in the treaty (Art. V) "do not refer to any freight tariffs whatever and particularly not to those of the internal traffic of the two parties"; and (3) that Art. IX secures to each of the contracting parties simply the mutual enjoyment of those favors in matters of commerce and navigation which the other party grants to a third power; such a favor with respect to trade in petroleum had not, however, been conceded to any third state. If there were a discrimination in petroleum "according to its origin," the government would move in the matter, but such is not the case.[3] Mr. Kasson, in his reply dated November 15, 1884, expressed himself as pleased at learning that there were no discriminations and that none were contemplated which would operate more disadvantageously to the United States than to third powers. As to

[1] *Foreign Relations*, 1878, p. 403.

[2] The imperial state secretary cited this case in recent years in the Reichstag as one in which the American government assumed the applicability of the treaty of 1828 to the whole empire.

[3] This letter of Bismarck has a historic interest in that it is the only one in the files of the American embassy at Berlin (so far as the writer could find) which was in the handwriting of the "iron chancellor."

the first two observations of Bismarck, Mr. Kasson said that it was certainly true that the treaties of 1785, 1799 and 1828

did not contemplate the future power of government to nullify the equality of privileges at the frontier by inequality of conditions imposed on the transportation to the interior destination. Yet His Highness will recognize that possibility, where such transportation is directly regulated by the government, and it was against this possible result that the undersigned invoked the treaty principle of equality of treatment and denied it applicable to any method of governmental interposition which should bear unequally on importation of merchandise on its way to market. This principle seemed to him distinctly recognized in the classes of the treaty referred to.[1]

Since the time of this discussion Germany has embarked upon a very comprehensive system of preferential railroad rates.[2] This includes a policy of indirect, if not direct, discrimination "according to origin" —which Bismarck assumed to violate most-favored-nation rights."[3]

VI. SARATOGA ARRANGEMENT, 1883–1891.

The German import prohibition[4] of American hog products in 1883—officially on sanitary grounds—led to a lengthy discussion, not only between the two governments, but also among the various parties on both sides of the Atlantic, whose interests were adversely affected by the measure. After repeated attempts to obtain the removal of this prohibition, the American government enacted several measures, culminating in the law of March 3, 1891, which provided for an examination of meat products destined for exportation (sec. 1). Provisions aimed against the importation of adulterated foods, liquors, etc. (secs. 2 and 3), were also incorporated in the law. As a supplement to the former (sec. 1) the president, if satisfied that any foreign government

[1] See the interpellation in the Reichstag on December 8–9, 1897, especially the speech of Minister Passadowsky in regard to American petroleum. See also the botanical distinction upon foreign woods, made in order, by the application of preferential railroad rates, to restrict their importation into Germany.—*Foreign Relations*, 1897, pp. 237–46.

[2] *Manuscripts in American Embassy*, Berlin (published by permission of Secretary Hay in 1900).

[3] There is an excellent report on this subject by MR. GASTRELL, British commercial attaché at Berlin in a "blue book" *Commercial No. 2*, 1898.

[4] It is interesting in this connection to note the closing paragraph of article V of the treaty of 1828: "Nor shall any prohibition be imposed on the importation or exportation of any article the produce or manufacture of the United States or of Prussia to or from the ports of the United States, or to or from the ports of Prussia, which shall not equally extend to all nations."

was discriminating against American products, "may direct that such products of such foreign states so discriminating against any product of the United States as he may deem proper shall be excluded from importation to the United States" (sec. 5), while supplemental to secs. 2 and 3 the act empowered the president to suspend the importation of articles deemed "dangerous to the health or welfare of the people of the United States" (sec. 4). Also, as bearing on the discussion, the reciprocity clause (sec. 3) of the McKinley bill should be mentioned —Germany being especially interested in securing the advantage of "free sugar" provided for in the act. Lastly are the German commercial (Caprivi) treaties with Austria-Hungary and other European countries, granting lower import duties on certain products, the most important, so far as the United States was concerned, being the reduction of the duty on certain agricultural products.

This conflict of interests was partially overcome by the so-called "Saratoga Arrangement" of 1891 wherein it is stated by the German chargé, von Mumm, that, in view of the American meat-inspection act,

the imperial government is happy to be able to announce that there is no longer any cause for maintaining in force the prohibition promulgated on sanitary grounds in 1883. The imperial government, in making this declaration, bases its action upon the supposition that, after the abolition of the aforesaid German prohibition of importation, the president of the United States will no longer have any occasion for the exercise, as regards the German empire, of the discretionary powers conferred upon him by the Fifty-first Congress. (Sec. 3 of tariff act of 1890, and sec. 5 of the law of March 3, 1891, already referred to.)

The American plenipotentiary, Mr. Foster, in reply said:

It is very gratifying to me to give you the assurance, by direction of the president, that the contemplated action of the imperial government . . . . will remove the occasion for the exercise by the president, as against the German empire, of the power conferred upon him by sec. 5 of the meat-inspection law.

Mr. Foster added that the president accepted the granting to the United States of the lower rates of duties provided for in the Caprivi treaties "as a due reciprocity for the action of the Congress of the United States, as contained in sec. 3 of the tariff act of October 1, 1890.[1]

The entire transaction was regarded by the United States as nothing more or less than a "bargain"—an interpretation easily deducible

[1] Reaffirmed by President Harrison in his proclamation of February 1, 1892.

from the events above recorded. From this standpoint, sec. 3 of the McKinley bill — on which the president stated that the granting of the lower rates of the Caprivi treaties was based — having been annulled by the tariff act of 1894, it would seem that the American government could claim no violation of the most-favored-nation right should the German government withdraw the benefits of these lower rates.[1] Germany, however, deprived herself of the advantage of this interpretation by the position she held in regard to the nature of the Saratoga agreement, viz., that it was "purely explanatory." "The confederated governments, when they had negotiated the commercial treaty with Austria-Hungary in 1891, did not doubt for a moment," said State Secretary von Marschall in the Reichstag on May 7, 1897, "that they had the obligation to concede to the United States the same reduction of the tariff which had been granted Austria-Hungary." It would appear, therefore that, after the repeal of sec. 3 of the McKinley bill by the tariff act of 1894, both countries had arrived, by quite different modes of interpretation, at practically the same conclusion — that matters were pretty much as they were before 1891, so far as the most-favored-nation right was concerned, Germany and the United States both basing this right upon the treaty of 1828, the former as applicable to the empire, the latter as applicable only to Prussia.[2]

VII. SUGAR-BOUNTY QUESTION, 1894–97.

An important question, involving the nature of German-American most-favored-nation rights, arose out of the sugar-bounty clause of the

[1] Secretary Sherman in addressing the German chargé at Washington on September 22, 1897 (*Foreign Relations*, 1897, p. 179), said "that the secretary of the treasury is of the opinion, in which I join, that the said agreement was no longer in force at the time of the passage of the act of July 24, 1897, inasmuch as the act of August 28, 1894, repealed section 3 of the act of October 1, 1890, under which the agreement was made."

[2] It is apparent by the citation of Calwer above referred to (p. 6) that the German government was restricted in its most-favored-nation right by its treaty (Frankfurt) of 1871 with France, which compelled it to grant to the latter *gratuitously* all concessions to certain third powers. Such concessions must thereby be granted to the United States without a consideration. This situation is easily inferred in German diplomatic correspondence with the United States, but the whole tenor of German-American correspondence indicates an entire ignorance of the purport of the Frankfurt treaty on the part of the American government. The citations above show that the latter believed it had made real concessions to Germany by the Saratoga arrangement and that the German government encouraged this belief and did not until years after, when the situation became embarrassing, disillusionize the American government by saying that the "concessions" of the lower rates of the Caprivi treaties were no concessions at all, as the United States was entitled to them without any consideration.

tariff act of 1894. This act — after repealing the reciprocity clause of the McKinley bill and placing sugar on the "duty list" — provided that all sugar coming from a country paying a bounty on exportation should pay an additional duty of one-tenth of a cent per pound.[1] Germany protested[2] against this measure on the ground that the payment of a bounty is a "purely domestic matter and is not to be considered in connection with the establishment of duties between states;" that the additional duty on imported bounty-paid sugar violates the most-favored-nation clause; and that

the addition, moreover, falls more heavily upon the sugar industry of Germany than it does upon that of other bounty-paying countries, since the German bounty . . . . is by no means as high as those of Austria and France. . . . . The excitement is great in Germany because [observed the German ambassador, Baron Saurma] it is generally believed that the United States in the agreement of August 22 [*i.e.*, the Saratoga note] guaranteed exemption to Germany from the duty on sugar in return for the concession of the conventional duties on American agricultural products and the removal of the restrictions on the importation of swine.[3]

In other words, the popular conception in Germany is that the Saratoga agreement was "a bargain" and not "merely explanatory." Secretary Gresham, in his reply, went out of his way to admit even more than was asked of him — basing his argument upon the treaty of 1828. The measure complained of does, he maintained, violate the most-favored-nation agreement

of the United States and Prussia, not the entire German empire, and a bounty can no more be considered as a discrimination than can the imposition of a protection or practically prohibition duty on the importation of an article. . . . . The protection duty on importation and the bounty on exportation are alike intended, whatever may be their effect, to create a national advantage in production and in manufacture. [In conclusion.] The additional duty, therefore, levied by the act of 1894 on all sugars coming from bounty-paying countries is not responsive to any measure that may be considered as constituting a discrimination by those countries against the production or manufactures of the United States, but is itself a discrimination against the produce or manufacture of such countries. It is an attempt to offset a domestic favor or encouragement to a certain industry by the very means forbidden by the treaty.

[1] The same principle had been incorporated in the McKinley bill, but applied only to sugar above No. 16 of the Dutch standard. No objection was then made by Germany, as it affected only about one-seventy-fifth of her sugar exports to the United States.

[2] *Foreign Relations*, 1894, pp. 234–9. [3] *Ibid.*

Surely the German government could ask no more from a secretary of state. Mr. Olney, at that time attorney-general and later Mr. Gresham's successor, made it very plain that he did not share this view of his colleague,[1] and the president did not enthusiastically accept it, although in his annual message of 1894 he said: "In the interests of commerce of both countries and to avoid even the accusation of treaty violation, I recommend the repeal of so much of the statute as imposes that duty." In this spirit the recommendation of the president was favorably acted upon by the House, but was defeated in the Senate. "If foreign countries," wrote Senator Lodge in the *Forum* (Vol. XIX, p. 12), "can give export bounties and we cannot offset them by import duties, then we have lost one of our sovereign rights and foreign countries can control our tariff." This view may be said to represent the official attitude of the past two administrations. The standpoint of nations, like that of individuals, is generally influenced by economic interests. At the international sugar conference which was held at London in 1888 the very same principle involved in the present question came up for discussion. Germany and some of the other powers were desirous of bringing about, by international agreement, an abolition of export bounties on sugar. Hence it is not so surprising to read the statement of Count von Hatzfeldt, the German ambassador at the court of St. James and the representative of the imperial government at this conference, that

> the imperial government does not share the opinion that the most favored-nation-clause would prevent the high contracting parties from prohibiting bounty-fed sugar altogether or from levying thereon a special duty exceeding the amount of the bounty.[2]

The tariff act of 1897, known as the Dingley bill, contained the bounty measure of the act of 1894, but specified that the additional duty should be equal to the net amount of such bounty and should include indirect as will as direct bounties. This remedied the objection made by the imperial government in 1894 that the addition fell more heavily upon the sugar industry of Germany than it did upon that of other bounty-paying countries.

The German government, through its representative at Washington, Baron von Thielmann, entered protest on the ground (1) that it violated the most-favored-nation clause of the treaty of 1828, and (2)

[1] *Senate Miscellaneous Documents, No. 52*, Fifty-third Congress, third session.

[2] Supplement to London *Gazette*, September 6, 1888.

"destroyed the premises upon which the Saratoga notes were effected"[1] — a statement difficult to reconcile with the assertion of von Marschall that these notes "created no new rights, but merely made more definite rights already existing." Baron von Thielmann did not fail to refer to the position taken by Mr. Gresham in 1894, nor did the American government neglect to call attention to the changed attitude of the imperial government since the international sugar convention of 1888. The various discussions which followed showed that, while the new administration did not take seriously the second objection raised by the German government, it categorically repudiated the view taken by Mr. Gresham and maintained, as Germany did in 1888, that the laying of countervailing duties to offset a bounty was no violation of the most-favored-nation agreement.

III. TONNAGE DUTIES, 1894–96.

German-American most-favored-nation relations were involved in a discussion of the American tonnage dues. By the law of June 26, 1884,[2] it was enacted that, in lieu of the then existing tonnage duty of 30 cents per ton, vessels entering the harbors of the United States from North and South American ports should pay only 3 cents per ton (not exceeding 15 cents per year), while vessels from all other ports should pay 6 cents per ton (not to exceed 30 cents per year). Since these reductions were made "unconditionally and without regard to the taxes, however relatively high these countries on their side levy on American ships,"[3] the German government maintained, through its representative at Washington, Count von Alvensleben, that it was in violation of Art. IX of the treaty of 1828, which had been "successively asserted by both governments to be valid for all Germany,"[4] and requested both "the abatement of the tonnage tax to 3 cents per ton" and "the replacement of the tonnage which, at the rate of 6 cents per ton, has been overpaid since the law of the 26th of June, 1884, went into effect." The subject was referred to the attorney-general, whose

[1] *Foreign Relations*, 1897, pp. 175–7.

[2] *United States Statutes at Large*, Vol. XXIII, § 14, p. 57.

[3] This was not strictly the case, inasmuch as the president was empowered to suspend by proclamation "the collection of so much of the duty herein imposed on vessels entered [from North and South American ports] . . . . as may be in excess of the tonnage and lighthouse dues or other equivalent tax or taxes imposed upon American vessels by the government of the foreign country in which such port is situated."— Sec. 14.

[4] *Foreign Relations*, 1885, p. 443; also CLEVELAND'S *First Annual Message*.

conclusions, "accepted by the president" (to quote Secretary Bayard), were as follows:[1]

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act and entered in our ports is, I think, purely geographical in character inuring to the advantage of any vessel of any power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the act. I see no warrant, therefore, to claim that there is anything in the most-favored-nation clause of the treaty between this country and the powers mentioned that entitles them to have the privileges of the fourteenth section extended to their vessels sailing to this country from ports outside of the limitation of the act.[2]

The justification of the position of the United States may well be questioned[3]—in fact, has been questioned, during Mr. Cleveland's second administration by Secretary Gresham in connection with a discussion of the sugar-bounty question, wherein he showed that the United States had, on at least one former occasion, maintained successfully against Great Britain the same principle which European nations were now holding to.[4] The situation was awkward, but was relieved by the law of June 19, 1886,[5] whereby the president was empowered to suspend, by proclamation, the tonnage dues "from any port as may be in excess of the tonnage and lighthouse dues or other equivalent tax or taxes imposed in said port on American vessels." The attention of the German government having been called to this law on August 25, 1887,[6] by Mr. Coleman, the American chargé at Berlin, and the German minister at Washington having given the assurance

that no tonnage or lighthouse dues or any equivalent tax or taxes whatever . . . . are imposed upon American vessels entering the ports of Germany, either by the imperial government or by the governments of the maritime states, and that vessels belonging to the United States of America and their cargoes are not required in German ports to pay any fee or due of any kind or nature, or any import due, *higher or other than is payable by German vessels or their cargoes.*[7]

[1] *Foreign Relations*, 1885, p. 443.

[2] Similar claims of most-favored-nation violation were made by the governments of Belgium, Denmark, Sweden and Norway, and Portugal.

[3] That this law aimed to discriminate may be inferred by the statement of President Cleveland, who, on commenting on the subject in his first annual message, said: "Undoubtedly the commerce with our near neighbors . . . . demands special and considerate treatment."

[4] *Foreign Relations*, 1894, pp. 236–9.

[5] *Statutes at Large*, Vol. XXXIV, § 14, p. 81.

[6] *Foreign Relations*, 1888, p. 570.

[7] *Ibid.*, p. 670.

President Cleveland, under date of January 26, 1888,[1] proclaimed the abolition of all tonnage dues on German vessels entering the United States from Germany. The concluding statement in the German note is italicized because it seems to the writer that it was a disregard of this point by the American government which placed the latter at fault when, on December 3, 1896, Mr. Cleveland, during his second administration, revoked the proclamation suspending the collection of tonnage and other dues upon vessels from German ports.[2] The facts of the case appear to be that certain lighthouse dues and other taxes were, both before and since the proclamation of January 26, 1888, regularly collected on *all* vessels entering German ports. There was not apparently "any differential treatment," to quote Secretary Olney, for *all* vessels, both domestic and foreign, were subjected to the same treatment, and this was expressly stated by the German government, as indicated in the above italics. The entire diplomatic correspondence on the subject very plainly indicates that it was not a question as to whether Germany laid the same tonnage dues on her own as on foreign vessels, but whether, so far as the United States was concerned, she laid any tonnage dues of any description on American vessels. The purport of the American law was to abolish the tonnage duties on those vessels coming from foreign countries which reciprocated. The fault of the American government was not in revoking the proclamation, but in ever issuing it. The only weakness on the German side of the discussion was in the imperial government insisting that its tonnage and other dues were not "politically identical in character with the tonnage and other dues enacted in the United States under the constitutional powers of Congress."

IX. FRENCH RECIPROCITY ARRANGEMENT, 1900.

A discussion involving German-American most-favored-nation rights arose after the proclamation of the reciprocity arrangement in 1898 between France and the United States, in accordance with sec. 3 of the Dingley tariff act. Germany claimed the concessions granted to the French republic on the ground that the United States was enjoying gratuitously the lower rates of the Caprivi treaties. The American government replied that it was a question of policy for the imperial government to decide whether the lower rates of these treaties were to

[1] *Statutes at Large*, Vol. XXV, pp. 1484, 1485.

[2] *Messages of the Presidents*, IX, 697; also *Foreign Relations*, 1896, pp. lxviii–lxx, 142–63.

be granted, without a consideration, to the countries with which she had most-favored-nation agreements. Should she grant them to one or more countries gratuitously, no exception could legally be made in the case of the United States. Art. V of the Prussian treaty stipulated that Prussian imports into the United States shall pay no higher or other duties than the imports of any other country. This is abridged by Art. IX providing that particular favors to any other nations granted by either party shall become common to the other party, "freely, where it is freely granted to such other nation, or on yielding the same compensation when the grant is conditional." It is regretted by the United States that Germany should apparently "decline to consider Art. IX . . . . as having any force or effect in connection with Art. V." More directly as to the French treaty the concessions of the United States were dependent upon compensations made by France. The American government is "ready to make the same concessions to Germany for the equivalent compensation, as required by said Art. IX and as authorized by sec. 3 of the tariff act of 1897." In the second place, if the concessions were "freely granted" to Germany, the United States would be obliged to grant the same gratuitously to all other "most favored nations."[1]

[1] In this connection it is interesting to note the contention of Germany that she was treated more disadvantageously than Switzerland. It appears that Switzerland claimed from the United States, without a consideration, the lower rates granted to France for "specific compensations," basing her claim both upon the wording of the treaty of 1850 between the two republics and upon the negotiations which led to its enactment. A careful study revealed the justice of this claim, and Secretary Hay, replying to the Swiss representative at Washington, said: "Under the circumstances we believe it to be our duty to acknowledge the equity of the reclamation presented by your government. Both justice and honor require that the common understanding of the high contracting parties at the time of executing the treaty should be carried into effect. It is also my duty to advise you that foregoing recognition of the equity of the claim of your government compels us at the same time to regard the articles VIII–XII of the treaty as henceforth constituting an exception to the otherwise uniform policy of the United States. This policy has been to treat the commerce of all friendly nations with equal fairness, giving exceptional favors to none. Should this government continue to give to Swiss products gratuitously all advantages which other countries acquire for an equivalent compensation, it would expose itself to the just reproaches of other governments for its exceptional favoritism. We desire that our friendly international policy should be maintained in its uniform application to all our commercial relations. It may, therefore, be necessary in case the governments of the United States and Switzerland should not be able to agree upon some practical arrangement of the matter in question, that the president should communicate to your government notice of his intention to arrest the operation of the treaty of 1850 or of the clauses of said treaty numbered from VIII to XII."

The failure of the two governments to come to any satisfactory agreement led to the conventional notification on the part of the United States to arrest the operation of the treaty.

X. GERMAN RECIPROCITY ARRANGEMENT, 1900.

The matter was finally settled by the German-American reciprocity agreement of July 13, 1900, for the understanding of which brief mention must be made of another chapter of German sanitary legislation. The imperial government on February 1, 1898, restricted the importation of American fruit because of the finding of San José scales in certain shipments of American origin. The prohibitory order was based on sanitary grounds, and the German government justified its course by referring to several scientific publications of the United States Department of Agriculture and by citing the "drastic laws of Oregon and British Columbia against the pest."[1] By the reciprocity arrangement above referred to the United States granted to Germany the same concessions (champagne excepted) she had previously given to France. These concessions had a political, but a very small commercial, advantage. Germany, on the other hand, guaranteed to the products of the United States on their entry into Germany, the tariff rates of the Caprivi treaties, and furthermore agreed to annul the regulations requiring that dried and evaporated fruit imported from the United States be inspected on account of the danger from San José scales. In other words, so far as tariff modifications were concerned, Germany granted nothing not already enjoyed by the United States; while, so far as the second privilege was concerned, it would appear that the restrictions placed on American fruit imports into Germany were sanitary in their inception, but their removal was based on the ground of commercial concessions.

XI. CONFIDENTIAL CIRCULAR RELATING TO AMERICAN CONSULS, 1900.

Another matter, which brings into question most-favored-nation rights, should be referred to. There was read in the Reichstag on March 1, 1900, a confidential circular issued on July 24 of the previous year by Baron von Reinbaben, at present a cabinet minister, while he was *Regierungspräsident* of the Rhine province. This order was doubtless issued by a central authority and extended over all of Prussia. It allowed German administrative officials to give certain information to foreign consuls in accordance with a circular of June 10, 1894:

> But to American consuls [so runs the order] . . . . no information is to be given which could affect German interests, no matter whether the questions asked by them concern matters of general importance or not. . . . . As

[1] *Foreign Relations*, 1898, pp. 307–47.

information which on no account must be given to American consuls is to be considered statistics concerning infringements of the Food Act and the laws which have been passed to supplement it, especially those provisions concerning the manufacture and sale of food and utensils injurious to health, including playthings, concerning the falsification and sale of such goods, concerning trichinous and measly home-grown meat, and concerning the prevalence of human and animal diseases.

One need not search far for the motive for such a measure. The articles concerning which information was not to be given referred, in the first place, to those whose importation the president was empowered, by the law of March 3, 1891, to exclude should he regard their importation as "dangerous to the health or welfare of the people of the United States." Now this circular — the official character of which has never been denied — by placing obstacles in the way of a scientific examination of the sanitary character of a large class of articles exported from Germany into the United States, appears to be an official admission that such an examination would not be conducive to German interests. In the second place, the German government, after having prohibited American meat and other products on sanitary grounds, now attempts, in keeping with the spirit of this circular, to place difficulties in the way of the efforts of the American agricultural department to study the scientific justification for such prohibitions.

There is another side of the question which may enable one to understand German feeling, if not German statesmanship. The American tariff-administrative laws are extremely unwieldy and antiquated. The customs valuation, for purposes of reckoning *ad valorem* duties, is nominally based on consular invoices. In reality, however, owing to modern means of communication and the development of the world-market, these consular invoices have largely outlived their usefulness. Nevertheless they still remain on the statute books, and the complaint of Germany and other powers is that the information which they call for tend to place in the hands of American officers many trade secrets of German industry. Furthermore, the German government in issuing the circular above referred to could not have been unmindful of the indirect threat of the American government to find German wines adulterated, German toys poisoned by dyes, etc., and thus "dangerous to the health and welfare of the people of the United States," should the imperial government persist in that policy which has been characterized by her best experts as "politico-sanitarian."[1]

[1] FISK, *Die Handelspolitik der Vereinigten Staaten 1890–1900* ("Schriften des Vereins für Socialpolitik, Vol. XC), chapter on "American Tariff Administration."

XII. PRESENT GERMAN-AMERICAN TREATY RELATIONS.

Treaty relations between the United States and Germany appear to be regulated, for practical purposes, until the end of 1903. The present tariff situation in Germany and the attitude of various political parties make the future status of these relations somewhat doubtful. Count von Passadowsky, imperial secretary of the interior, appears to have settled this point to his own satisfaction.[1] He tells us that after this date German-American legal relations will rest upon the treaty of 1828. Inasmuch as the United States has treaty relations not only with Prussia, but also with the German seaport towns through which all German-American trade passes, it should be assumed that she has treaty relations with the whole empire. He then attempts to show that the United States in her relations with Austria, based upon the treaty of 1829, which is almost identical with the Prussian treaty of 1828, had conceded this principle of *unbeschränkte Meistbegünstigung*, and that therefore the same interpretation should be applied in her relations with Germany. The best reply to make to these loose statements of the imperial secretary is, perhaps, the answer of Calwer:

This assertion shows not only a lack of tact, but is a positive perversion (*sachlich verkehrt*). After the imperial government has repeatedly withdrawn itself from the ground of the treaty — in fact, has surrendered the treaty in its most essential points; and after it has, in its negotiations with the United States, openly acquiesced in the American position, it looks peculiar to see the imperial government planting itself again on surrendered territory and compelling the United States to adopt its wavering legal interpretation. The standpoint is entirely without foundation. We might agree that the treaties with Prussia and the Hansa cities are valid; we might further assert that German exports to the United States are shipped from the coastal states Prussia, Hamburg, Bremen, and Lübeck; but it cannot, on this account, be demanded that the United States shall regard all commodities coming from the coastal states as products of those states. Were this the case, then Switzerland might, under certain conditions, claim for herself the rights of the treaty. So far as she sent her exports to the United States *via* Hamburg, they would represent exports of the coastal states. According to the American tariff law, however, the country of origin and not that of exportation is considered for goods paying import duties.[2] By means of the consular invoices the tariff officers of the United States can easily distinguish that part of German imports coming from Prussia and the Hansa cities which originated in other countries. Now if the treaty of 1828 is only valid

[1] In the Reichstag on February 11, 1899. His argument is not vitiated by the reciprocity convention of the following year (p. 233).

[2] Sec. 8 of Dingley bill.

between the German coastal states and the North American union, the German empire is no longer bound by it after the end of 1903.[1] Since Prussia cannot now carry on an independent tariff policy, the treaty lapses of its own accord. The question will then be whether the German government will care to renew the treaty of 1828, and, if it desires this, whether it can induce the American government to agree to its applicability to the entire empire.[2]

The German government has recently come to a decision on the tariff question, with the dominant parties of the Reichstag, which means perceptibly higher import duties on many agricultural products. This bill affects adversely many American interests, and its effect on future treaty relations with the empire is very problematical. As indicating the trend of possible legislation in Germany, a quotation from a speech in the Reichstag on December 13 by Dr. Paasche, a National Liberal, may not be out of place:

> We expect that the government will undertake a thoroughgoing revision of all treaties giving the most-favored-nation advantages. Promises of this kind were made to us in committee. We have absolutely no occasion to concede anything to such nations as are glad to take what we give other countries without making us any concessions in return. The United States has introduced the limitation of the most favored nation; we have every reason to act in precisely the same manner.

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[1] This statement would indicate that Calwer regards the reciprocity agreement of 1900 as something more than "purely explanatory." By his course of reasoning we were without treaty regulations from 1894 to 1900 — that is, after the lapse of the Saratoga arrangements.

[2] CALWER, *Meistbegünstigung der Vereinigten Staaten*, p. 28; see also *Foreign Relations*, 1899, pp. 297–302.